circumstance sometimes relied upon, that realty and personalty are disposed of in the same clause, make a difference; for it has long been held that the same words when used in connection with different subjects may bear different constructions.[22]

The problem under discussion was presented in a recent case where realty and personalty were left upon trust to pay the income in equal shares "to A and B during their lives, and upon the death of either, her share to go to her heirs" until one half the principal had been paid to them. In accordance with both reason and authority it was held that the Rule in Shelley's Case applied to the gift of realty but not to the gift of personalty. *Lord* v. *Comstock*, 88 N. E. 1012 (Ill.).

TIME AS OF WHICH THE VALUE OF DOWER IS COMPUTED. — On the death of her husband a wife's right is to an assignment for life of lands one third in value of all those of which at any time during coverture the husband was seised; as of what time value is to be computed is a point upon which authorities have disagreed for centuries. From the earliest times it has been reasonably clear that where property of which a woman is dowable fluctuates in value after the death of the husband and before the assignment by the heir, her interest shall be set off on the basis of the changed value.[1] Plowden,[2] indeed, while admitting that ameliorations in the quality of the soil would inure to her, queried the right of a wife to profit by "collateral improvements"; but the distinction was not adopted. Early authority[3] was, however, cited by classic text writers[4] for the proposition that as to land aliened by the husband permanent improvements subsequently made were not to enhance the share of the wife. But in the case[5] which founded the modern English law of the subject a wife was, as to property which had been improved after alienation by the husband and before his decease, declared dowable at the higher rate. And a recent decision establishes in England the widow's right to share in all advances from natural or artificial causes in the hands alike of alienee or heir up to the moment when her interest is set off. *Williams* v. *Thomas*, [1909] 1 Ch. 713 (Eng., Ct. App., Mch., 1909).

Before its repudiation in England, however, this distinction between alienees of the husband and his heirs or devisees, was recognized in this country;[6] and it continues to be law to-day. In all the states a wife may share in appreciation from natural causes while the property remains unassigned in the hands of heir or devisee;[7] and the rule is almost every-

disregarded in *In re* Bishop & Richardson's Contract, *supra*); Jones *v.* Rees, 69 Atl. 785 (Del.).

[22] Forth *v.* Chapman, 1 P. Wms. 663; Herrick *v.* Franklin, L. R. 6 Eq. 593; Heiss Estate, 1 Pa. C. C. 397. But a different rule might be followed where the personalty is an adjunct to the realty. See Jackson *v.* Calvert, 1 J. & H. 235, 238.

[1] Fitzh. Abr. Tit. Voucher, 298.
[2] Plowd. Qu. 46.
[3] M. 17 H. 3 cited in Fitzh. Abr. Tit. Dower, 192.
[4] Co. Litt. 32 a; Perk. Conveyancing, § 328.
[5] Doe d. Riddell *v.* Gwinnell, [1841] 1 Q. B. 682.
[6] Powell *v.* Monson, etc., Man'f. Co., 3 Mason, 347.
[7] Catlin *v.* Ware, 9 Mass. 218.

where the same as to appreciation from artificial causes.[8] But advances through the efforts of a transferee of the husband [9] do not benefit the wife. Some cases,[10] against the great weight of authority,[11] apply the same rule even to the case of unassisted appreciation during the stranger's possession.

The technical reasons for differentiating the transferee of the husband from the heir or devisee are not altogether satisfactory. That an alienee should not be liable to the wife for more than he can recover from the heir on a common-law warranty [12] is not a consideration which should survive the existence of the common-law warranty itself. To say that it is the heir's folly to postpone the assignment to the improvements,[13] is in part to beg the question; for the act is foolish primarily because the law penalizes it. The voluntary nature of an alienee's improvements has been declared a reason for the widow's not sharing in them; [14] but such an argument would as well apply to improvements by an heir. The courts have relied most strongly upon the desirability of protecting an alienee in his outlays.[15] This applies with obvious force to the period between the alienation and the death of the husband. But it is hard to see wherein after the death the position of an alienee differs from that of an heir: each may at once assign dower and thereafter be free to make improvements on his own property. And there are intimations in the decisions that an alienee will not be protected if he improves after the death,[16] or after he has notice thereof.[17] The latter suggestion accords with a general principle [18] allowing an occupier of property under color of title the value of such improvements only as he has effected in good faith; [19] the former would establish the rule, applicable to heir and transferee alike, that a woman has no interest in improvements, other than her husband's, during coverture, but may share in all increases, naturally or artificially caused, after his death has consummated her right. However, the only case found in which argument was made for a difference in result as to an alienee's improvements before and after the husband's death, rejects such a distinction.[20]

THE CONNECTION OF INDEPENDENT TELEPHONE COMPANIES. — The public nature of telegraph and telephone systems was early recognized and individuals or corporations operating them were subjected to the con-

[8] Westcott *v.* Campbell, 11 R. I. 378. *Contra*, Manning *v.* Laboree, 33 Me. 343.

[9] McClanahan *v.* Porter, 10 Mo. 746. In Campbell *v.* Murphy, 2 Jones Eq. (N. C.) 357, the court gave the widow no share in improvements by the heir's transferee. This result seems hard to reconcile with any principle; such transferee must surely take subject to all the incidents of the widow's common law right of dower.

[10] Tod *v.* Baylor, 4 Leigh (Va.) 498. In New York the attainment of this result must be ascribed to the influence of statute. Shaw *v.* White, 13 Johns. (N. Y.) 179.

[11] Allen *v.* McCoy, 8 Oh. 418.

[12] Thompson *v.* Morrow, 5 Serg. & R. (Pa.) 289. The origin of this explanation is to be found in the Hale MSS. cited in Hargr. Co. Litt. 32 a, n. (8).

[13] Catlin *v.* Ware, *supra.*

[14] Thompson *v.* Morrow, *supra.*

[15] Powell *v.* Monson, etc., Man'f. Co., *supra.*

[16] Price *v.* Hobbs, 47 Md. 359, 388.

[17] Felch *v.* Finch, 52 Ia. 563.

[18] Viner's Abr. Tit. Discount, 1–4.

[19] Bright *v.* Boyd, 1 Story (U. S.) 478.

[20] Van Dorn *v.* Van Dorn, 3 N. J. L. 270.